

DO NOT REMOVE
FROM THE FILE

THE EFFECTIVE DATE OF THIS ORDINANCE IS FEBRUARY 4, 2002

ORDINANCE NO. 01-22-296

Re: Building Excise Tax

PREAMBLE

By State law, Section 2-7-131 of the Frederick County Code, Chapter 690 of the Laws of Maryland 2001, the County Commissioners of Frederick County are authorized to fix, impose and collect a Building Excise Tax.

The County Commissioners desire to impose such a Building Excise Tax to fund capital projects or indebtedness incurred for capital projects for additional or expanded public road facilities.

The County Commissioners have not imposed an impact fee for financing the capital costs of additional or expanded roads under the authority granted in Article 25, § 9J of the Annotated Code of Maryland.

The County Commissioners held a duly advertised public hearing concerning this Ordinance on December 18, 2001. The public had an opportunity to comment on this ordinance at this public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD
OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND as
follows:

FILED
APR 15 2 14 PM '02
SANDRA K. DALTON

PO: CAO, HORN, BROWNING, GIBSON, HART, BOLL, GRASSPICKLE, FILE

ARTICLE III.B. BUILDING EXCISE TAX

SEC. 1-8-71. ESTABLISHMENT OF TAX.

IN ACCORDANCE WITH CHAPTER 690, LAWS OF MARYLAND, 2001, SECTION 2-7-131 OF THE FREDERICK COUNTY CODE, THERE IS A BUILDING EXCISE TAX ON ALL NEW CONSTRUCTION IN FREDERICK COUNTY, WHICH TAX WILL FINANCE CAPITAL PROJECTS OR INDEBTEDNESS INCURRED FOR CAPITAL PROJECTS FOR ADDITIONAL OR EXPANDED PUBLIC ROAD FACILITIES.

SEC. 1-8-72. DEFINITIONS.

WORDS AND PHRASES USED IN THIS SUBTITLE SHALL HAVE THEIR USUAL MEANING, UNLESS OTHERWISE DEFINED IN THIS SECTION.

(A) *APPLICANT*: "APPLICANT" MEANS THE INDIVIDUAL, PARTNERSHIP, CORPORATION OR OTHER LEGAL ENTITY WHOSE SIGNATURE APPEARS ON THE BUILDING PERMIT APPLICATION.

(B) *BUILDING*: "BUILDING" MEANS ANY STRUCTURE USED OR INTENDED FOR SUPPORTING OR SHELTERING ANY USE OR OCCUPANCY. "BUILDING" DOES NOT INCLUDE A TEMPORARY STRUCTURE, AS DEFINED IN THE FREDERICK COUNTY BUILDING CODE.

(C) *CAPITAL PROJECTS FOR ADDITIONAL OR EXPANDED ROAD FACILITIES*: "CAPITAL PROJECTS FOR ADDITIONAL OR EXPANDED ROAD

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

FACILITIES" MEANS ALL CAPITAL PROJECTS FOR ROADS, BRIDGES AND INTERSECTION IMPROVEMENTS IN THE FREDERICK COUNTY CAPITAL IMPROVEMENTS PROGRAM.

(D) *CONSTRUCTION*: "CONSTRUCTION" MEANS CONSTRUCTION OF A BUILDING WHICH REQUIRES A BUILDING PERMIT. WHERE THE BUILDING REPLACES AN EXISTING BUILDING, "CONSTRUCTION" DOES NOT INCLUDE REPLACEMENT OF A BUILDING DUE TO CASUALTY OR LOSS WITHIN ONE (1) YEAR OF THAT CASUALTY OR LOSS, OR REPLACEMENT OF A MOBILE HOME ON A SITE, EXCEPT TO THE EXTENT THAT THE GROSS SQUARE FOOTAGE OF THE REPLACEMENT BUILDING OR REPLACEMENT MOBILE HOME EXCEEDS THE GROSS SQUARE FOOTAGE OF THE BUILDING OR MOBILE HOME BEING REPLACED.

(E) *DIRECTOR OF FINANCE*: "DIRECTOR OF FINANCE" MEANS THE DIRECTOR OF FINANCE FOR FREDERICK COUNTY OR DESIGNEE.

(F) *DIRECTOR OF PERMITS AND INSPECTIONS*: "DIRECTOR OF PERMITS AND INSPECTIONS" MEANS THE DIRECTOR OF PERMITS AND INSPECTIONS FOR FREDERICK COUNTY OR DESIGNEE.

(G) *DWELLING UNIT*: "DWELLING UNIT" MEANS A SINGLE UNIT PROVIDING COMPLETE, INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING AND SANITATION.

(H) *FARM CONSTRUCTION*: "FARM CONSTRUCTION" MEANS CONSTRUCTION INTENDED TO BE ACTIVELY USED FOR FARM OR AGRICULTURAL USE.

(I) *FARM OR AGRICULTURAL USE*: "FARM OR AGRICULTURAL USE" MEANS THE SAME AS DEFINED IN THE FREDERICK COUNTY ZONING ORDINANCE.

(J) *GROSS SQUARE FOOT*: "GROSS SQUARE FOOT" MEANS THE ENTIRE SQUARE FOOTAGE OF THE CONSTRUCTION AND IS THE SAME AS CALCULATED FOR BUILDING PERMIT PURPOSES UNDER THE FREDERICK COUNTY CODE. IT INCLUDES ALL FINISHED AND UNFINISHED AREAS OF THE CONSTRUCTION.

(K) *HABITABLE STRUCTURE*: "HABITABLE STRUCTURE" MEANS A STRUCTURE FOR LIVING, SLEEPING, EATING, OR COOKING.

(L) *MULTIFAMILY RESIDENTIAL CONSTRUCTION*: "MULTIFAMILY RESIDENTIAL CONSTRUCTION" MEANS CONSTRUCTION OF A RESIDENTIAL BUILDING CONTAINING MORE THAN ONE DWELLING UNIT.

(M) *NONRESIDENTIAL CONSTRUCTION*: "NONRESIDENTIAL CONSTRUCTION" MEANS ANY CONSTRUCTION OTHER THAN RESIDENTIAL CONSTRUCTION.

(N) *RESIDENTIAL CONSTRUCTION*: "RESIDENTIAL CONSTRUCTION" MEANS A BUILDING WHICH CONTAINS ONE (1) OR MORE DWELLING UNITS, INCLUDING BOARDING HOUSES BUT NOT INCLUDING INSTITUTIONAL

USES OR TRANSIENT ACCOMMODATIONS SUCH AS HOTELS, COUNTRY INNS OR BED AND BREAKFAST INNS. "RESIDENTIAL" INCLUDES ALL AREAS THAT ARE CONTAINED WITHIN A RESIDENTIAL BUILDING SUCH AS ATTACHED GARAGES OR HOME OCCUPATIONS, BUT DOES NOT INCLUDE NONRESIDENTIAL USES IN MIXED USE STRUCTURES.

(O) *RESIDENTIAL ADDITION CONSTRUCTION*: "RESIDENTIAL ADDITION CONSTRUCTION" MEANS CONSTRUCTION OF A RESIDENTIAL ADDITION TO A RESIDENTIAL BUILDING WHERE THE WORK REQUIRES A BUILDING PERMIT AND WHERE THE ADDITION INCREASES THE NUMBER OF GROSS SQUARE FEET OF THE RESIDENTIAL BUILDING.

(P) *STATE HIGHWAY*: "STATE HIGHWAY" MEANS ANY PUBLIC HIGHWAY OWNED BY THE STATE OF MARYLAND.

SEC. 1-8-73. AMOUNT OF TAX.

(A) THE AMOUNT OF THE BUILDING EXCISE TAX SHALL BE:

(1) RESIDENTIAL CONSTRUCTION:

(a) FOR THE FIRST 700 GROSS SQUARE FEET OF RESIDENTIAL CONSTRUCTION, NO BUILDING EXCISE TAX SHALL BE ASSESSED.

(b) FOR EACH ADDITIONAL GROSS SQUARE FOOT OF RESIDENTIAL CONSTRUCTION IN EXCESS OF 700 SQUARE FEET AND UP TO RESIDENTIAL CONSTRUCTION OF 1400 SQUARE FEET: \$0.10 PER GROSS SQUARE FOOT OF RESIDENTIAL CONSTRUCTION.

(c) IN ADDITION TO THE AMOUNT IN SECTION 1-8-73(A)(1)(b), FOR EACH ADDITIONAL GROSS SQUARE FOOT OF RESIDENTIAL CONSTRUCTION IN EXCESS OF 1400 SQUARE FEET: \$0.25 PER GROSS SQUARE FOOT OF RESIDENTIAL CONSTRUCTION.

(d) FOR MULTIFAMILY RESIDENTIAL CONSTRUCTION, ANY GROSS SQUARE FOOTAGE OF MULTIFAMILY RESIDENTIAL CONSTRUCTION NOT WITHIN A DWELLING UNIT SHALL BE ALLOCATED ON A PRO RATA BASIS TO EACH DWELLING UNIT WITHIN THE BUILDING. THE AMOUNT OF THE TAX SHALL BE CALCULATED FOR EACH DWELLING UNIT AS PROVIDED IN SUBSECTIONS a, b AND c BASED ON THE GROSS SQUARE FOOTAGE OF THE DWELLING UNIT PLUS THE DWELLING UNIT'S PRO RATA SHARE OF ANY GROSS SQUARE FOOTAGE NOT WITHIN A DWELLING UNIT.

(2) NONRESIDENTIAL CONSTRUCTION: \$0.75 PER GROSS SQUARE FOOT OF NONRESIDENTIAL CONSTRUCTION.

(B) *CALCULATION OF AMOUNT*: THE AMOUNT OF BUILDING EXCISE TAX TO BE PAID BY AN APPLICANT SHALL BE DETERMINED BY THE DIRECTOR OF PERMITS AND INSPECTIONS.

SEC. 1-8-74. PAYMENT OF TAX.

(A) *BUILDING EXCISE TAX PAID BEFORE ISSUANCE OF BUILDING PERMIT*: AN APPLICANT FOR A BUILDING PERMIT SHALL PAY THE BUILDING EXCISE TAX BEFORE THE ISSUANCE OF A BUILDING PERMIT.

(B) *REFUNDS*:

- (1) THE DIRECTOR OF FINANCE SHALL REFUND TO THE APPLICANT THE BUILDING EXCISE TAX PAID IF THE BUILDING PERMIT IS CANCELLED OR EXPIRES.
- (2) IF, UPON APPEAL BY AN APPLICANT WHO HAS PAID THE BUILDING EXCISE TAX, THE COUNTY COMMISSIONERS DETERMINE THAT THE DIRECTOR OF PERMITS AND INSPECTIONS HAS ERRED IN CALCULATING THE BUILDING EXCISE TAX, THE DIRECTOR OF FINANCE SHALL REFUND TO THE APPLICANT THE DIFFERENCE BETWEEN THE AMOUNT OF BUILDING EXCISE TAX PAID BY THE APPLICANT AND THE CORRECT AMOUNT.

SEC. 1-8-75. EXEMPTIONS.

(A) *FARM CONSTRUCTION*. FARM CONSTRUCTION IS NOT SUBJECT TO THE BUILDING EXCISE TAX SO LONG AS THE CONSTRUCTION CONTINUES TO BE ACTIVELY USED FOR FARM OR AGRICULTURAL USE. SHOULD THE CONSTRUCTION BE USED FOR SOME PURPOSE OTHER THAN ACTIVE FARM OR AGRICULTURAL USE, THEN THE BUILDING EXCISE TAX SHALL BE REMITTED TO THE DIRECTOR OF FINANCE AT THE THEN EXISTING AMOUNT OF THE BUILDING EXCISE TAX.

(B) *GOVERNMENT CONSTRUCTION*. NO BUILDING EXCISE TAX SHALL BE IMPOSED ON CONSTRUCTION BY THE STATE OF MARYLAND, THE

COUNTY COMMISSIONERS, ANY MUNICIPALITY OR THE FEDERAL GOVERNMENT.

(C) *RESIDENTIAL ADDITION CONSTRUCTION.* NO BUILDING EXCISE TAX SHALL BE IMPOSED ON RESIDENTIAL ADDITION CONSTRUCTION UNLESS THE RESIDENTIAL ADDITION CONSTRUCTION INCREASES BY 100% OR MORE THE GROSS SQUARE FOOTAGE OF A RESIDENTIAL BUILDING FOR WHICH A BUILDING PERMIT HAS BEEN ISSUED. THE BUILDING EXCISE TAX SHALL BE IMPOSED ON THAT PORTION OF ANY RESIDENTIAL ADDITION CONSTRUCTION WHICH EXCEEDS 100% OF THE GROSS SQUARE FOOTAGE OF THE RESIDENTIAL BUILDING FOR WHICH A BUILDING PERMIT HAS BEEN ISSUED.

(D) *RESIDENTIAL ACCESSORY STRUCTURES.* NO BUILDING EXCISE TAX SHALL BE IMPOSED ON RESIDENTIAL ACCESSORY STRUCTURES THAT ARE NOT HABITABLE.

SEC. 1-8-76. CHANGE IN USE.

UPON RECEIPT OF A BUILDING PERMIT APPLICATION, THE DIRECTOR OF PERMITS AND INSPECTIONS SHALL DETERMINE WHETHER IT IS FOR A CHANGE IN USE. IN SUCH A CASE, THE BUILDING EXCISE TAX SHALL BE IMPOSED BASED ON THE USE APPLIED FOR IN THE BUILDING PERMIT APPLICATION. A CREDIT SHALL BE GRANTED FOR ANY BUILDING EXCISE TAX PREVIOUSLY PAID FOR THIS CONSTRUCTION. NO REFUND SHALL BE

GRANTED IF THE CREDIT FOR ANY BUILDING EXCISE TAX PREVIOUSLY PAID EXCEEDS THE BUILDING EXCISE TAX IMPOSED.

SEC. 1-8-77. DEVELOPMENT ROAD IMPROVEMENT FUND.

(A) *ESTABLISHMENT OF FUND:* THE DIRECTOR OF FINANCE SHALL ESTABLISH AN ACCOUNT TO BE KNOWN AS THE DEVELOPMENT ROAD IMPROVEMENT FUND. ALL RECEIPTS FROM BUILDING EXCISE TAXES SHALL BE DEPOSITED IN THE DEVELOPMENT ROAD IMPROVEMENT FUND. INTEREST EARNED BY MONEY IN THE DEVELOPMENT ROAD IMPROVEMENT FUND SHALL ACCRUE TO THE DEVELOPMENT ROAD IMPROVEMENT FUND.

(B) *USE OF DEVELOPMENT ROAD IMPROVEMENT FUND:* FUNDS FROM THE DEVELOPMENT ROAD IMPROVEMENT FUND SHALL BE EXPENDED ONLY TO PAY FOR CAPITAL PROJECTS OR INDEBTEDNESS INCURRED FOR CAPITAL PROJECTS FOR ADDITIONAL OR EXPANDED PUBLIC ROAD FACILITIES.

(C) *COUNTY MATCH:* BEFORE THE COUNTY COMMISSIONERS MAY EXPEND FUNDS FROM THE DEVELOPMENT ROAD IMPROVEMENT FUND, THE COUNTY COMMISSIONERS MUST MATCH AT LEAST THE SAME AMOUNT OF FUNDS FOR CAPITAL PROJECTS FOR ADDITIONAL OR EXPANDED PUBLIC ROAD FACILITIES.

(D) *STATE HIGHWAY MATCH:* BEFORE THE COUNTY COMMISSIONERS MAY EXPEND FUNDS FROM THE DEVELOPMENT ROAD IMPROVEMENT

FUND FOR A ROAD PROJECT ON A STATE HIGHWAY, THE STATE MUST MATCH AT LEAST THE SAME AMOUNT OF FUNDS FOR A CAPITAL PROJECT FOR ADDITIONAL OR EXPANDED PUBLIC ROAD FACILITIES ON THE SAME ROAD PROJECT ON THE STATE HIGHWAY THAT IS WITHIN FREDERICK COUNTY.

SEC. 1-8-78. MUNICIPALITIES.

(A) *BUILDING EXCISE TAX APPLICABLE.* THIS BUILDING EXCISE TAX SHALL APPLY TO ALL CONSTRUCTION IN FREDERICK COUNTY, INCLUDING CONSTRUCTION WITHIN THE BOUNDARIES OF A MUNICIPALITY.

(B) *IDENTICAL MUNICIPAL BUILDING EXCISE TAX.*

- (1) IF A MUNICIPAL CORPORATION HAS IMPOSED A TAX ON CONSTRUCTION SPECIFICALLY DEVOTED AND LIMITED BY LAW TO USE FOR CAPITAL PROJECTS FOR ADDITIONAL OR EXPANDED PUBLIC ROAD FACILITIES, THE COUNTY MAY NOT IMPOSE OR COLLECT A BUILDING EXCISE TAX ON THE SAME CONSTRUCTION WITHIN THE MUNICIPAL CORPORATION.
- (2) AN APPLICANT SHALL APPLY FOR THIS BY MAKING A WRITTEN REQUEST WITH THE DIRECTOR OF PERMITS AND INSPECTIONS BEFORE THE ISSUANCE OF THE BUILDING PERMIT.
- (3) THE DIRECTOR OF PERMITS AND INSPECTIONS SHALL EITHER GRANT OR DENY THE REQUEST.

(C) *COLLECTION WITHIN MUNICIPAL CORPORATION.* A MUNICIPAL CORPORATION SHALL ASSIST THE COUNTY COMMISSIONERS IN THE COLLECTION OF THIS BUILDING EXCISE TAX WITHIN THE MUNICIPAL CORPORATION BY EITHER

- (1) COLLECTING THE TAX PRIOR TO THE ISSUANCE OF A BUILDING PERMIT AND REMITTING THE TAX MONTHLY TO THE DIRECTOR OF FINANCE; OR
- (2) REQUIRING THE TAX TO BE PAID TO THE DIRECTOR OF FINANCE PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.

SEC. 1-8-79. APPEALS.

(A) *ADMINISTRATIVE APPEALS:* AN APPLICANT AGGRIEVED BY A DECISION REGARDING THE CALCULATION OF THE AMOUNT OF BUILDING EXCISE TAX, THE GRANTING OR DENIAL OF AN EXEMPTION, OR OTHERWISE INTERPRETING OR APPLYING THIS BUILDING EXCISE TAX MAY APPEAL THE DECISION TO THE COUNTY MANAGER WITHIN 30 DAYS OF THE DIRECTOR'S DECISION, PROVIDED THAT EITHER:

- (1) PROCESSING OF THE BUILDING PERMIT IS DELAYED PENDING THE DECISION OF THE COUNTY MANAGER; OR
- (2) THE APPLICANT PAYS THE BUILDING EXCISE TAX PRIOR TO FILING THE APPEAL.

(B) *BURDEN OF PROOF:* THE BURDEN OF PROOF SHALL BE ON THE APPELLANT TO DEMONSTRATE THAT THE DECISION IS ERRONEOUS.

(C) *JUDICIAL REVIEW*: ANY PARTY AGGRIEVED BY A DECISION OF THE COUNTY MANAGER MAY FILE FOR JUDICIAL REVIEW OF THE DECISION IN ACCORDANCE WITH MARYLAND RULES 7-201 AND FOLLOWING. THE DECISION OF THE CIRCUIT COURT MAY BE APPEALED TO THE COURT OF SPECIAL APPEALS OR, UPON CERTIORARI, TO THE COURT OF APPEALS IN ACCORDANCE WITH THE MARYLAND RULES. THE COUNTY COMMISSIONERS MAY FILE A RESPONSIVE PLEADING AND BE A PARTY TO OR FILE FOR JUDICIAL REVIEW IN THE CIRCUIT COURT, OR TAKE AN APPEAL TO THE COURT OF SPECIAL APPEALS, OR, UPON CERTIORARI, TO THE COURT OF APPEALS, OF ANY DECISION MADE UNDER THIS ARTICLE.

SEC. 1-8-80. ENFORCEMENT.

(A) *MISDEMEANOR*: IT IS UNLAWFUL FOR ANY PERSON OR ENTITY TO ENLARGE, ALTER OR CHANGE ANY USE OF PROPERTY OR TO ERECT, CONSTRUCT, ENLARGE, ALTER, REPAIR, MOVE, IMPROVE, MAKE, PUT TOGETHER OR CONVERT ANY BUILDING IN THE COUNTY, OR ATTEMPT TO DO SO, OR CAUSE THE SAME TO BE DONE, WITHOUT FIRST PAYING ANY BUILDING EXCISE TAX IMPOSED BY THIS ARTICLE. ANY PERSON OR ENTITY WHO SHALL SO VIOLATE THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR, AND UPON CONVICTION THEREOF, SHALL BE FINED UP TO FIVE HUNDRED DOLLARS (\$500.00) OR IMPRISONED FOR UP TO THIRTY (30)

DAYS, OR BE BOTH FINED AND IMPRISONED. EACH DAY THAT THE VIOLATION CONTINUES SHALL BE DEEMED A SEPARATE OFFENSE.

(B) *ACTION TO ENFORCE:* IN THE EVENT THE BUILDING EXCISE TAX IS NOT PAID AS REQUIRED, THE COUNTY ATTORNEY MAY INSTITUTE AN ACTION TO RECOVER THE BUILDING EXCISE TAX AND ENJOIN THE USE OF THE PROPERTY UNTIL THE BUILDING EXCISE TAX IS PAID. THE PERSON WHO FAILS SO TO PAY SHALL BE RESPONSIBLE FOR THE COSTS OF SUCH SUIT, INCLUDING REASONABLE ATTORNEY'S FEES.

(C) *LIEN AND ENFORCEMENT SAME AS COUNTY REAL PROPERTY TAXES:* IF NOT PAID AS REQUIRED BY THIS ARTICLE, THE BUILDING EXCISE TAX SHALL CONSTITUTE A LIEN AGAINST THE PROPERTY BEING DEVELOPED AND SHALL BE LEVIED, COLLECTED, AND ENFORCED IN THE SAME MANNER AS ARE COUNTY REAL PROPERTY TAXES, AND SHALL HAVE THE SAME PRIORITY AND BEAR THE SAME INTEREST AND PENALTIES AS COUNTY REAL PROPERTY TAXES FOR LIEN PURPOSES.

SEC. 1-8-81. ANNUAL REPORTS.

THE DIRECTOR OF FINANCE SHALL PREPARE AND SUBMIT AN ANNUAL REPORT ON OR BEFORE OCTOBER 31 OF EACH YEAR TO THE COUNTY COMMISSIONERS WHICH SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE PRIOR FISCAL YEAR:

(A) TOTAL AMOUNT OF BUILDING EXCISE TAXES COLLECTED.

(B) AMOUNT OF FUNDS APPROPRIATED FROM THE DEVELOPMENT ROAD IMPROVEMENT FUND.

(C) AMOUNT OF FUNDS EXPENDED FROM THE DEVELOPMENT ROAD IMPROVEMENT FUND.

(D) AMOUNT OF FUNDS FROM COUNTY SOURCES APPROPRIATED FOR CAPITAL PROJECTS FOR ROADS, BRIDGES, HIGHWAYS AND INTERSECTION IMPROVEMENTS IN THE FREDERICK COUNTY CAPITAL IMPROVEMENT PROGRAM.

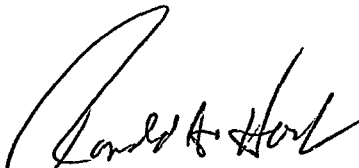
(E) FUNDS REMAINING IN THE DEVELOPMENT ROAD IMPROVEMENT FUND.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on February 4, 2002 and shall apply to all construction for which a building permit is applied for after February 3, 2002.


The undersigned hereby certifies that this Ordinance was approved and adopted on the 18th day of December, 2001.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



Ronald A. Hart, County Manager



David P. Gray, President 